



DEPARTMENT OF DEFENSE

Office of the Secretary

Expiration of Temporary Changes to TRICARE Regulations during the Coronavirus Disease 2019 (COVID-19) Pandemic

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs (ASD(HA)), Department of Defense (DoD).

ACTION: Notice of expiration of temporary changes.

SUMMARY: The ASD(HA) is publishing this notice to announce that temporary changes to the TRICARE regulations related to the coronavirus disease 2019 (COVID-19) pandemic were terminated on April 10, 2023, for those temporary changes that terminate at the end of the President's national emergency; on May 11, 2023, for changes that terminate at the end of the Health and Human Services (HHS) Public Health Emergency (PHE); and will be terminated on September 30, 2023, for the temporary regulation change creating a diagnosis related group (DRG) add-on for New COVID-19 Treatments Add-on Payments (NCTAPs).

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SUPPLEMENTARY INFORMATION: The ASD(HA) approved temporary modifications to TRICARE regulations in response to the COVID-19 pandemic and the President's national emergency for the COVID-19 outbreak (Proclamation 9994, 85 Federal Register (FR) 15337). Interim final rules (IFRs) implementing temporary changes to the TRICARE regulation were published on May 12, 2020 (85 FR 27921); September 3, 2020 (85 FR 54914); October 30, 2020 (85 FR 68753); and January 12, 2023 (88 FR 1992). All provisions of the IFR published on May 12, 2020, and all but one provision of the IFR published on September 3, 2020, were finalized, with changes, in a final rule published June 1, 2022 (87 FR 33001).

The temporary provisions in the four IFRs, as modified by the final rule where applicable, were set to expire automatically, depending on the particular temporary provision, at: (1) the termination of the President's national emergency; (2) the termination of the associated Secretary of HHS's PHE; (3) the termination of the Centers for Medicare and Medicaid Services' (CMS's) Hospitals Without Walls initiative; or (4) at the end of the fiscal year in which the HHS PHE terminates. On January 30, 2023, the Biden Administration announced plans to terminate both the President's national emergency and the HHS PHE on May 11, 2023.¹ CMS has previously stated that the Hospital Without Walls initiative would terminate when the HHS PHE ended.² Public Law 118-3 was subsequently enacted on April 10, 2023, immediately terminating the President's national emergency.³ Several provisions in the IFRs are permanent changes; these provisions will not expire.

The Department stated in its IFRs that the ASD(HA) would publish a document in the FR announcing the termination dates for the temporary provisions; this FR notice satisfies that requirement. This document also provides notice that the ASD(HA) is not extending any of the provisions overseas beyond their termination in the United States.

A. The following temporary regulatory changes ended at the end of the day on April 10, 2023, in the United States and overseas as stated in this notice. DoD will publish final rules removing these temporary regulatory changes from the Code of Federal Regulations (CFR) after their termination date:

1. Paragraph 199.4(b)(3)(xiv) of Title 32 of the CFR: Temporary waiver of the requirement for a three-day prior hospital stay before admission to a skilled nursing facility ended for all new skilled nursing facility admissions after April 10, 2023.

2. Title 32 CFR 199.4(e)(26)(iii)(B): Temporary coverage of National Institute of Allergy and Infectious Disease (NIAID)-sponsored COVID-19 clinical trials ended on April 10,

¹ <https://www.whitehouse.gov/wp-content/uploads/2023/01/SAP-H.R.-382-H.J.-Res.-7.pdf>

² <https://www.cms.gov/files/document/hospitals-and-cahs-ascs-and-cmhcs-cms-flexibilities-fight-covid-19.pdf>

³ <https://www.congress.gov/bill/118th-congress/house-joint-resolution/7/text>

2023. Eligible beneficiaries who enrolled in a covered trial on or before April 10, 2023, will continue to have their care covered through the end of the trial.

3. Title 32 CFR 199.4(g)(15)(i)(A): Temporary coverage of the treatment use of investigational drugs under U.S. Food and Drug Administration (FDA)-approved expanded access programs ended for all new episodes of treatment after April 10, 2023.

4. Title 32 CFR 199.6(c)(2)(i): Temporary waiver of certain interstate and international licensing requirements ended for all care received after April 10, 2023.

B. The following temporary regulatory changes ended at the end of the day on May 11, 2023, in the United States and overseas as stated in this notice. DoD will publish final rules removing these temporary regulatory changes from the CFR after their termination date:

1. Title 32 CFR 199.6(b)(4)(i)(I): Temporary waiver of certain acute care facility requirements for facilities registering with Medicare as a hospital under CMS's Hospitals Without Walls initiative ended on May 11, 2023. Care provided after May 11, 2023, will be reimbursed under the methodology appropriate for the facility's current status (ambulatory surgery center, etc.), consistent with Medicare's guidance to facilities qualified as acute care facilities under the Hospital Without Walls initiative.⁴

2. Title 32 CFR 199.14(a)(1)(iii)(E)(2): Temporary adjustments to the DRG-based reimbursement amounts for patients diagnosed with COVID-19 ended for all new admissions after May 11, 2023.

3. Title 32 CFR 199.14(a)(9)(i): Temporary reimbursement of all long-term care hospitals (LTCHs) at the LTCH prospective payment system standard Federal rate ended for all new admissions after May 11, 2023.

C. The temporary regulation change creating a DRG add-on for NCTAPs (32 CFR 199.14(a)(1)(iv)(C)) will end for all new admissions after September 30, 2023. The NCTAP is designed to mitigate potential financial disincentives for hospitals to provide new COVID-19

⁴ <https://www.cms.gov/files/document/hospitals-and-cahs-ascs-and-cmhcs-cms-flexibilities-fight-covid-19.pdf>

treatments for eligible inpatient cases that use certain new products with current FDA approval or emergency use authorization to treat COVID-19. DoD will publish a final rule removing this temporary regulatory change from the CFR after its termination date.

D. The following provisions permanently adopted in the IFRs, as modified by the final rule, where applicable, remain in effect:

1. Title 32 CFR 199.6(b)(4)(xxi) and paragraph 199.14(c): Addition of freestanding End Stage Renal Disease (ESRD) facilities as authorized institutional providers and adoption of a reimbursement system for freestanding ESRD facilities.

2. Title 32 CFR 199.14(a)(1)(iv)(A): Adoption of Medicare's New Technology Add On Payments; permanent, special payments that are offered because new medical services and new technologies are not yet included in the calculation of standardized DRG rates.

3. Title 32 CFR 199.14(a)(1)(iv)(B): Adoption of Medicare's Hospital Value Based Purchasing Program.

E. The Department is evaluating certain temporary provisions adopted in the IFRs not yet finalized in a final rule (specifically, temporary coverage of the treatment use of investigational drugs approved under FDA expanded access program, NIAID-sponsored clinical trials, and NCTAPs). If the ASD(HA) determines permanent changes to the regulation are required, such changes would be announced in future final rules. The effective date of such coverage would be announced in the final rule. Until such rules publish, these provisions expire as stated in the original IFRs and announced in this notice.

Dated: June 7, 2023.

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Alternate OSD Federal Register Liaison Officer,

Department of Defense.